

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

OASIS RESEARCH, LLC,	§	
	§	
Plaintiffs,	§	Case No. 4:10-CV-00435-ALM
	§	consolidated with
v.	§	
CARBONITE, INC., ET AL,	§	Case No. 4:12-CV-00525-ALM
	§	Case No. 4:12-CV-00526-ALM
Defendants.	§	
	§	
	§	

**RESPONSE TO CARBONITE, INC. AND OASIS RESEARCH, LLC'S
MOTION TO ADJOURN AND SET A NEW TRIAL DATE**

Defendants EMC Corporation and Decho Corporation (collectively, "EMC") submit this Response to Carbonite, Inc. ("Carbonite") and Oasis Research, LLC's ("Oasis") Joint Motion to adjourn the Carbonite trial date and more importantly change the order of trials that has long been set by the Court. Neither Oasis nor Carbonite made any effort to meet and confer with EMC about the relief requested in their motion. For the reasons discussed below, while EMC takes no position on whether conflicts prevent Oasis and Carbonite from commencing their trial on September 14, 2015, as the Court directed, EMC respectfully objects to the attempt to change the order of the Carbonite and EMC trials.

For as long as the Court has focused on trial dates, it has scheduled Oasis to go to trial on liability and validity first against Carbonite, followed by EMC, consistent with the order of filing of the respective actions.¹ Oasis now seeks—apparently with Carbonite's consent—to switch that order in a way that prejudices EMC. Neither Oasis nor Carbonite has established good

¹ The case against Carbonite has a lower case number than the case against EMC. As the party with the lower number, the Carbonite liability trial has always been scheduled to occur before the EMC liability trial. *See, e.g.*, D.I. 544 (initially setting Carbonite liability trial and indicating EMC trial will be set "at a later date"), D.I. 587 (setting EMC trial after Carbonite trial). This held true just recently when the Court rescheduled the liability trials. *Compare*, D.I. 751 (September 14, 2015 Carbonite trial) with D.I. 752 (October 5, 2015 EMC trial).

cause for changing this long-standing order of trials. *See, e.g.*, Motion at 1 (simply proposing Carbonite trial “following the October 5, 2015 trial of Defendant EMC Corp.”). Accordingly, if the Court is inclined to further change the dates of any of the trials, EMC respectfully submits that the Court should retain the currently ordered sequence of trials—*Oasis v. Carbonite* followed by *Oasis v. EMC*. The parties can meet and confer on a schedule that would keep that sequence in place.

Dated: May 7, 2015

Respectfully Submitted,

/s/ Chris R. Ottenweller

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice of compliance was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3)(A), on this date May 7, 2015.

/s/ Chris R. Ottenweller

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